INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	6
Conclusion	13

CITATIONS

Cases:

Douds v. *Local 1250, et al.*, 173 F. 2d 764 11

Elgin, J. & E. Railway Co. v. *Burley*, 325 U. S. 711 9

General Pictures Co. v. *Electric Co.*, 304 U. S. 175 .. 8

Hoover Motor Express Co., Inc. v. *Teamsters, et al.*, 217 F. 2d 49 9

Hughes Tool Co. v. *National Labor Relations Board*, 147 F. 2d 69 9

Indiana Metal Products Corp. v. *National Labor Relations Board*, 202 F. 2d 613 10

International Brotherhood of Electrical Workers v. *National Labor Relations Board*, 341 U. S. 694 .. 12

National Labor Relations Board v. *Associated Machines*, 219 F. 2d 433 ..... 6, 7

National Labor Relations Board v. *Jarka Corporation, et al.*, 198 F. 2d 618 12

National Labor Relations Board v. *LaSalle Steel Co.*, 178 F. 2d 829, certiorari denied, 339 U. S. 963 12

National Labor Relations Board v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241 .. 12

National Labor Relations Board v. *Saxe-Glassman Shoe Corp.*, 201 F. 2d 238 10

Cases—Continued Page

National Labor Relations Board v. *Sharples Chemicals, Inc.*, 209 F. 2d 645 10

National Labor Relations Board v. *Stow Manufacturing Co.*, 217 F. 2d 900, certiorari denied, 348 U. S. 964 ..... 10, 12

Radio Officers' Union v. *National Labor Relations Board*, 347 U. S. 17, affirming 196 F. 2d 960 .. 12

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., 151, *et seq.*):

Sec. 2 (5) 8, 10

Sec. 7 10

Sec. 8 (a) (2) 10, 12

Sec. 8 (c) 12

Sec. 9 (a) 10, 11

Miscellaneous:

93 Cong. Rec. 4196 11

93 Cong. Rec. 6443 11

H. Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 45 11

H. Rep. No. 245, 80th Cong., 1st Sess., p. 33 10

H. R. 3020, 80th Cong., 1st Sess., April 18, 1947, Sec. 8 (d) (3) 10

Memorandum of March 11, 1935, Senate Committee on Education and Labor (Legislative History of the National Labor Relations Act, 1935) (Govt. Print. Off., 1949) pp. 1320, 1347 .. 9

S. Rep. No. 573 on S. 1958, 74th Cong., 1st Sess., p. 7 8

Twentieth Century Fund, *How Collective Bargaining Works*, p. 675 (1942) 9

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 440

STANDARD COIL PRODUCTS CO., INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (Pet. 15–25) is reported at 224 F. 2d 465. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 58–106, 111–113)[1] are reported at 110 N. L. R. B. 412.

JURISDICTION

The decree of the court below (Pet. 26–27) was entered on July 15, 1955. The petition for a writ of certiorari was filed on October 3, 1955.

[1] References designated "R." are to the printed appendix to the Board's brief in the court below.

The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether a joint employee-management committee established by the employer to "give the employees a voice in [their] job security" and to discuss, *inter alia,* "any employee-management problems" including "betterment of working conditions, safety, quality, propriety of dismissals and other topics of mutual interest", is a "labor organization" within the meaning of Sections 2 (5) and 8 (a) (2) of the National Labor Relations Act, as amended.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), are set forth in Appendix A to the petition for certiorari, pp. 13–14.

STATEMENT

A. THE BOARD'S FINDINGS OF FACT

The facts relevant here were stipulated below (R. 48–57, 62–63, Pet. 2, 16) and may be summarized as follows:

Petitioner began operations at its North Dighton, Massachusetts, plant in June 1953. On June 18, 1953, five days before plant operations began, several top management officials met and decided to form an Employee-Management Com-

mittee when the plant work force numbered 600 employees, a condition thereafter reached on September 1. (R. 62; 48.)

On September 3, a notice posted on the plant bulletin board informed employees that the Committee was being established by the Company to serve as "a team that, in its joint efforts, will be of benefit to all concerned, and give you a voice in your job security," and to discuss, *inter alia,* "betterment of working conditions, safety, quality, propriety of dismissals, and other topics of mutual interest" (R. 62–63, 65–66; 48, 50). The notice further stated that the Committee would be comprised of six representatives to be elected by the employees on September 9, and two management representatives; that the Company would pay employee representatives for all time spent in carrying out Committee functions; that employees could consult their elected representatives on company time concerning "any employee-management problems"; and that employees could also continue to take up any matter with management directly (R. 65–67; 48, 50–51).

The scheduled election was held at the plant on September 9 (R. 67; 48–49, 51). The six employee representatives who were elected met thereafter with the company personnel manager, at least once a month, on five occasions between September 11 and December 9, 1953 (R. 67–68; 49).

Among the matters discussed at the first Committee meeting on September 11 were complaints concerning smoking by employees while waiting in line to punch out. The Committee decided "that for the benefit of all concerned" smoking under these circumstances in the future would be prohibited, and bulletins to this effect would be prepared (R. 69–70; 53). Further discussion covered such matters as the Company's delay in instituting a plant cafeteria and the policies which would govern its future operation (R. 70; 54–55), the procedure to be followed for promotions (R. 69; 56), the waiting period entailed in punching out and the possibility of installing another time clock to alleviate the problem (R. 70; 53–54), conduct of employees (R. 69; 55), availability of a relief operator (R. 69; 56–57), and complaints concerning a lead girl's work (R. 69; 56). In addition, the Company's attitude toward the then current organizational drive by an AFL union was discussed, with management explaining in this connection the basis of the established wage rates and working conditions (R. 70–71; 55–56). Topics of the same general nature were also discussed at the subsequent Committee meetings (R. 68; 49).

In addition to discussing with management such general problems affecting all, or groups of, the employees, the Committee, through an employee representative, also met with Company officials to process the specific grievances of indi-

vidual employees and to consult with management on the propriety of dismissing or disciplining employees (R. 64, 84–85, 89; 4–6, 8–10, 12–13, 21, 29–33, 38).

B. THE BOARD'S CONCLUSIONS AND ORDER

Upon the facts summarized above, the Board found in relevant part (R. 111, 71–75) that the Employee-Management Committee was a labor organization within the meaning of Section 2 (5) of the Act, and that petitioner had sponsored, dominated, and assisted it in violation of Section 8 (a) (2) and (1). The Board, accordingly, ordered petitioner to cease and desist from the unfair labor practice found; to withdraw all recognition from and completely disestablish the Employee-Management Committee as the representative of any of its employees; and to post appropriate notices (R. 111–113, 105–106).

C. THE DECISION OF THE COURT BELOW

The court below, enforcing in full the portion of the Board's order summarized above,[2] held there was "no doubt that the [petitioner] dominated the Employee-Management Committee" (Pet. 18). The court further held, as had the Board, that the Committee came "within the scope of the statutory definition of 'labor organization'" (Pet. 22), and that it was unnecessary

[2] The Board also found that petitioner had discriminatorily discharged an employee in violation of the Act (R. 111, 94–100). The court below set aside this finding (Pet. 22–25).

in the circumstances of this case "to decide whether or not [to] accept the reasoning of" the Sixth Circuit in *National Labor Relations Board* v. *Associated Machines,* 219 F. 2d 433, to the effect that a committee dealing with "individual rather than collective complaints" did not constitute a labor organization within the meaning of the Act (Pet. 21). In this connection the court below stated that since it was "clear" the "Committee dealt with the [petitioner], if not on grievances, at least concerning 'conditions of work'" which were "related to the future of the employer and employee relationship and * * * had a collective rather than an individual interest," the Committee constituted a labor organization within the meaning of the Act, "applying even the standards of the *Associated Machine* case" (Pet. 20–21).

ARGUMENT

1. Contrary to petitioner's contention (Pet. 5–6), there is no conflict between the decision below and the *Associated Machines* case, *supra.* The holding there that the employee committee involved did not constitute a labor organization within the meaning of the Act was specifically premised by the Sixth Circuit upon its finding that the Committee, both in its creation and functioning, was solely concerned with grievances and working conditions which were both unrelated to the future of the employer-employee

relationship, and of merely individual or group, rather than collective, interest to the employees (Pet. 37–41). Here, "[i]t is evident," as the court below stated (Pet. 20–21), that the Committee met "even the standards of the *Associated Machine* case" by dealing with petitioner (see *supra*, pp. 3–4) "concerning 'conditions of work'" which clearly were "related to the future of the employer and employee relationship" and of "a collective rather than an individual interest"—considering, for example, such matters as a rule regarding smoking to be applicable to all employees while waiting to punch out, the institution and future operation of a plant cafeteria, promotion procedures, and means for expediting departure of the plant force at closing time. Since the instant case is distinguishable on its facts from *Associated Machines*—and thus, as the court below stated, presents no occasion "to decide whether or not [to] accept the reasoning of the *Associated Machine case*" (Pet. 21)—the asserted conflict does not exist.

Petitioner's suggestion (Pet. 6) that the Committee here dealt with "grievances and conditions of work of the same basic character" as those in *Associated Machines* disputes nothing more than the contrary finding of fact by the court below that the matters set forth above, unlike those in the cited case, concerned future working conditions generally applicable to the plant employees

as a whole. Particularly in view of the manifest correctness of this finding, "granting of the writ would not be warranted merely to review the evidence or inferences drawn from it." *General Pictures Co.* v. *Electric Co.*, 304 U. S. 175, 178.

2. Equally unsubstantial is petitioner's claim (Pet. 8–11) that the Board and the court below erred in holding that the Committee was a "labor organization" within the meaning of the Act. The holding accords completely with the Congressional definition of that term as revealed by the statutory language, legislative history, and settled judicial construction.

Section 2 (5), which was carried over without change from the original Act, defines the term "labor organization" to include "any organization of any kind * * * or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." The legislative history of the original Act shows that Congress deliberately defined this term "very broadly" to reach "all organizations of employees that deal with employers"[3]—including "employee representation plans or committees [which] are nothing but agencies for presenting and discussing grievances or other

[3] S. Rep. No. 573 on S. 1958, 74th Cong., 1st Sess., p. 7.

minor matters, and do not address themselves at all to the fundamental issues of collective bargaining agreements"[4]—so as to prevent "an employer * * * [from] organiz[ing] a shop committee to present grievances on questions of safety and other minor matters even though he does not use such shop committee as a subterfuge for collective bargaining on the essential points of wages and hours."[5] The facts set forth in the Statement, *supra,* pp. 3–4, establish that the Committee here was specifically created and actually functioned to deal with petitioner concerning "working conditions" of general interest as well as grievances.[6] Settled judicial authority confirms, as noted by the court below (Pet. 19), that the Committee thus clearly came within the

[4] Memorandum of March 11, 1935, prepared for the Senate Committee on Education and Labor, comparing S. 1958 (74th Cong., 1st Sess.), with S. 2926 (73d Cong., 2d Sess.), pp. 22–23; reprinted in Legislative History of the National Labor Relations Act, 1935 (Government Printing Office, 1949), p. 1347.

[5] *Id.*, at p. 1; reprinted in Legislative History of the National Labor Relations Act, 1935 (Government Printing Office, 1949), p. 1320.

[6] The term "grievance" customarily denotes "minor disputes" which "arise incidentally in the course of an employment" and "represent specific maladjustments of a detailed or individual quality." *Elgin, J. & E. Railway Co.* v. *Burley*, 325 U. S. 711, 722–724, 735, 737–739. See also *Hughes Tool Co.* v. *National Labor Relations Board*, 147 F. 2d 69, 72–73 (C. A. 5); *Hoover Motor Express Co., Inc.* v. *Teamsters, et al.*, 217 F. 2d 49, 53–54 (C. A. 6); Twentieth Century Fund, *How Collective Bargaining Works*, p. 675 (1942).

"very broad" statutory definition of a labor organization.[7]

Petitioner is mistaken in arguing (Pet. 8–9) that its contrary view is supported by Sections 7 and 9 (a) of the amended Act, which guarantee that employees may refrain from concerted activities and may also, either individually or in groups, present grievances to their employer. Neither section purports to alter the definition of "labor organization" in Section 2 (5) or to remove the proscription in Section 8 (a) (2) against employer establishment or domination of such an organization or committee. Petitioner's reading, moreover, was explicitly rejected by Congress, which refused to adopt a provision of the original House bill that would have permitted, absent a recognized bargaining agent, the "[f]orming or maintaining by an employer of a committee of employees and discussing with it matters of mutual interest, including grievances, wages, hours of employment, and other working conditions." H. R. 3020, 80th Cong., 1st Sess., April 18, 1947, Sec. 8 (d) (3); H. Rep. No. 245, 80th Cong., 1st Sess., p. 33. No

[7] *E. g., National Labor Relations Board* v. *Stow Manufacturing Co.*, 217 F. 2d 900, 903–904 (C. A. 2), certiorari denied, 348 U. S. 964; *National Labor Relations Board* v. *Saxe-Glassman Shoe Corp.*, 201 F. 2d 238, 244 (C. A. 1); *Indiana Metal Products Corp.* v. *National Labor Relations Board*, 202 F. 2d 613, 620–621 (C. A. 7); *National Labor Relations Board* v. *Sharples Chemicals, Inc.*, 209 F. 2d 645, 647–649, 651–652 (C. A. 6).

intent to incorporate this result into the Act *sub silentio* may be imputed to Congress, as petitioner further suggests (Pet. 10–11). For Senator Taft, one of the principal sponsors of the amended Act, subsequently made clear that Congress had specifically rejected all attempts to "amend * * * the provisions in subsection 8 (2) [of the original Act] relating to company-dominated unions" and had left its prohibitions "unchanged." 93 Cong. Rec. 6443.[8] See also the statement of Senator Ball, one of the managers of the amendments in the Senate, that the version of the Act ultimately adopted "leaves the provisions of section 8 (a) * * * (2) exactly as they" were in the original Act. 93 Cong. Rec. 4196. Accordingly, there is no warrant for the implication in petitioner's argument that the rights conferred upon *employees* by Section 9 (a) were intended to license an *employer* "to infiltrate the influence of a 'company union.'" *Douds* v. *Local 1250, et al.*, 173 F. 2d 764, 773 (C. A. 2).

[8] The statement in House Conference Report No. 510, 80th Cong., 1st Sess., p. 45, cited by petitioner (Pet. 10–11), affords no support for its contention. While reaffirming the right of individual employees and groups of employees to confer with their employer concerning grievances, the House conferees, including Representative Hartley, made no claim that any employer right to establish such groups, previously sought to be conferred by the House, had survived the Senate-House conference.

Petitioner's reliance (Pet. 8–9, 11) on the free speech guaranty of Section 8 (c) and its claim that the Committee in this case was not initiated to prevent organization of the Company's employees are equally unavailing. An employer's "good motives" are immaterial to a violation of Section 8 (a) (2) (*National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 251, 248), and "[t]he general terms of 8 (c) appropriately give way to the specific provisions" of 8 (a) (2) (*International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 341 U. S. 694, 700–705).[9]

[9] *Accord: National Labor Relations Board* v. *Stow Manufacturing Co.*, 217 F. 2d 900, 903–904 (C. A. 2), certiorari denied, 348 U. S. 964; *Radio Officers' Union* v. *National Labor Relations Board*, 347 U. S. 17, 33, 42–48, affirming 196 F. 2d 960, 965 (C. A. 2); *National Labor Relations Board* v. *LaSalle Steel Co.*, 178 F. 2d 829, 835 (C. A. 7), certiorari denied, 339 U. S. 963; *National Labor Relations Board* v. *Jarka Corporation, et al.*, 198 F. 2d 618, 621 (C. A. 3).

CONCLUSION

The decision below is correct and presents no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

THEOPHIL C. KAMMHOLZ,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
DOMINICK L. MANOLI,
Assistant General Counsel,
ALICE ANDREWS,
Attorney,
National Labor Relations Board.

NOVEMBER 1955.

U. S. GOVERNMENT PRINTING OFFICE: 1955